

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ZACKERY CRABTREE,

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Petitioner,

Case No. 3:19-cv-00479-LRH-CLB

ORDER

WILLIAM GITTERE, et al.,

Respondents.

I. INTRODUCTION

This case is a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 brought by Zackery Crabtree, a prisoner held in custody by the Nevada Department of Corrections. For the reasons set forth herein, the court will deny Crabree's habeas petition.

II. BACKGROUND

Under a guilty plea agreement consolidating two criminal cases, Crabtree was convicted in the Fifth Judicial District Court for Nevada of invasion of the home and attempted battery by a prisoner. The court sentenced him to consecutive terms totaling 67 to 168 months and entered a judgment of conviction on September 27, 2016. Crabtree's attempts at a direct appeal were dismissed as untimely.

In June 2017, Crabtree filed a post-conviction petition for a writ of habeas corpus in the state district court. Prior to the state district court ruling upon his post-conviction petition, Crabtree filed motions to modify his sentence and to withdraw his guilty plea.

The state district court denied the motions a couple of weeks after they were filed

1 in December 2017. Then, in June 2018, the state district court denied Crabtree's post-
2 conviction petition. Crabtree appealed. In June 2019, the Nevada Supreme Court entered
3 an order affirming the lower court's judgment denying post-conviction relief.

4 In August 2019, Crabtree initiated this federal habeas corpus proceeding. In
5 January 2020, he filed an amended petition raising three grounds for relief. In response
6 to the petition, respondents filed a motion to dismiss arguing that all three grounds were
7 unexhausted. The court agreed with respect to Grounds 1 and 3 (but not Ground 2) and
8 gave Crabtree the option of either abandoning the unexhausted claims or requesting a
9 stay while he returned to state court to exhaust his unexhausted claims. He chose the
10 latter and respondents did not oppose.

11 Consequently, the court entered an order imposing a stay, and Crabtree filed a
12 second habeas petition in state court. The state district court entered an order erroneously
13 stating that the state court need not act on the petition because Crabtree had a case
14 pending in federal court. Crabtree petitioned the Nevada Supreme Court for a writ of
15 mandamus, which the court denied because Crabtree had neglected to attach a copy of
16 the petition for writ of habeas corpus that he had filed in the lower court.

17 In May 2022, this court granted Crabtree's request to reopen these proceedings.
18 In August 2022, respondents filed a motion to dismiss. In deciding the motion to dismiss,
19 the court concluded that Grounds 1 and 3 of Crabtree's petition are technically exhausted,
20 but procedurally defaulted because they would be procedurally barred by the state courts.
21 The court reserved judgment as to whether the procedural default should be excused.

22 Respondents then filed an answer to all three grounds in the petition. The time
23 allotted for Crabtree to file a reply has elapsed. Thus, the case is ready for a decision on
24 the merits.

25 **III. STANDARDS OF REVIEW**

26 Where a petitioner has procedurally defaulted his claims, federal review is barred
27 unless he "can demonstrate cause for the default and actual prejudice as a result of the
28 alleged violation of federal law, or demonstrate that failure to consider the claims will

1 result in a fundamental miscarriage of justice." *Coleman v. Thompson*, 501 U.S. 722, 750
 2 (1991). If a state court has adjudicated a habeas corpus claim on its merits, a federal
 3 district court may only grant habeas relief with respect to that claim if the state court's
 4 adjudication "resulted in a decision that was contrary to, or involved an unreasonable
 5 application of, clearly established Federal law, as determined by the Supreme Court of
 6 the United States" or "resulted in a decision that was based on an unreasonable
 7 determination of the facts in light of the evidence presented in the State court proceeding."
 8 28 U.S.C. § 2254(d).

9 A state court acts contrary to clearly established federal law if it applies a rule
 10 contradicting the relevant holdings or reaches a different conclusion on materially
 11 indistinguishable facts. *Price v. Vincent*, 538 U.S. 634, 640 (2003). And a state court
 12 unreasonably applies clearly established federal law if it engages in an objectively
 13 unreasonable application of the correct governing legal rule to the facts at hand. *White v.*
 14 *Woodall*, 134 S. Ct. 1697, 1705–07 (2014). As "a condition for obtaining habeas relief," a
 15 petitioner must show that the state-court decision "was so lacking in justification that there
 16 was an error well understood and comprehended in existing law beyond any possibility
 17 of fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

18 **IV. DISCUSSION**

19 **A. Grounds 1 and 3**

20 In Ground 1, Crabtree claims that his state court conviction and sentence violate
 21 his right to due process under the Fifth and Fourteenth Amendment because his guilty
 22 plea was the product of an illegal agreement involving substantial assistance benefits. In
 23 Ground 3 claim, he claims that his sentence constitutes cruel and unusual punishment in
 24 violation of the Eighth Amendment. As noted above, these claims are both procedurally
 25 defaulted.

26 In its order deciding respondents' motion to dismiss, the court advised Crabtree
 27 that he could argue grounds for excusing the procedural defaults when he filed his reply
 28 to respondents' answer. See ECF No. 69 at 4. Crabtree did not file a reply. Thus, Grounds

1 and 2 are dismissed as procedurally defaulted. See *Coleman*, 501 U.S. at 750.

2 **B. Ground 2**

3 In Ground 2, Crabtree alleges that he was deprived of effective assistance of
 4 counsel in violation of his constitutional rights because his counsel failed to enforce an
 5 agreement that he would be granted probation if he provided substantial assistance to
 6 law enforcement.

7 The right to counsel embodied in the Sixth Amendment provides “the right to the
 8 effective assistance of counsel.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984)
 9 (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). In *Strickland*, the United
 10 States Supreme Court held that an ineffective-assistance claim requires a petitioner to
 11 show that: (1) his counsel’s representation fell below an objective standard of
 12 reasonableness under prevailing professional norms in light of all of the circumstances of
 13 the particular case; and (2) it is reasonably probable that, but for counsel’s errors, the
 14 result of the proceeding would have been different. *Strickland*, 466 U.S. at 690, 694.
 15 When an ineffective assistance of counsel claim bears on a defendant’s decision to enter
 16 a guilty plea, the petitioner must demonstrate that “there is a reasonable probability that,
 17 but for counsel’s errors, he would not have pleaded guilty and would have insisted on
 18 going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985) (citations omitted).

19 In affirming the state district court’s denial of Crabtree’s petition for writ of habeas
 20 corpus, the Nevada Court of Appeals cited the correct federal standards and held as
 21 follows:

22 We conclude that Crabtree did not show deficient performance. . . .
 23 The record belies Crabtree’s allegation that he received an unrecorded
 24 promise of probation: he acknowledged during the plea canvass that no
 25 party had made any promises beyond the guilty plea agreement, that
 26 sentencing was entirely up to the court, and that a prior conviction for
 27 burglary—which he had—would preclude probation. The record next repels
 Crabtree’s allegation that he had a relevant substantial assistance
 agreement: counsel and the district court independently reviewed the issue
 and concluded that whatever substantial assistance agreement existed was
 entered after the plea agreement was reached and had no connection to
 these proceedings.

28 ECF No. 45-33 at 4.

1 The state court record supports the court's findings regarding Crabtree's plea
2 colloquy. The transcript of a case status hearing held prior to sentencing casts some
3 doubt on the finding that assistance agreement did not occur until after Crabtree entered
4 his guilty plea. See ECF No. 44-27 at 3-4. Even so, Crabtree has not demonstrated the
5 state court made an unreasonable determination of the fact in light of the evidence before
6 it. See *Schriro v. Landigan*, 550 U.S. 465, 473 (2007) ("The question under [§ 2254(d)]
7 is not whether a federal court believes the state court's determination was incorrect but
8 whether that determination was unreasonable—a substantially higher threshold.") In sum,
9 the state court's rejection of Ground 2 withstands scrutiny under § 2254(d). Thus, a writ
10 of habeas corpus "shall not be granted." 28 U.S.C. § 2254(d).

11 || V. CONCLUSION

12 For the reasons set forth above, Crabtree's petition for habeas relief will be denied.

Certificate of Appealability

14 This is a final order adverse to a habeas petitioner. As such, Rule 11 of the Rules
15 Governing Section 2254 Cases requires this court to issue or deny a certificate of
16 appealability (COA). Accordingly, the court has *sua sponte* evaluated the claims within
17 the petition for suitability for the issuance of a COA. See 28 U.S.C. § 2253(c); *Turner v.*
18 *Calderon*, 281 F.3d 851, 864-65 (9th Cir. 2002).

19 Under 28 U.S.C. § 2253(c)(2), a COA may issue only when the petitioner "has
20 made a substantial showing of the denial of a constitutional right." With respect to claims
21 rejected on the merits, a petitioner "must demonstrate that reasonable jurists would find
22 the district court's assessment of the constitutional claims debatable or wrong." *Slack v.*
23 *McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4
24 (1983)). For procedural rulings, a COA will issue only if reasonable jurists could debate
25 (1) whether the petition states a valid claim of the denial of a constitutional right and (2)
26 whether the court's procedural ruling was correct. *Id.*

Having reviewed its determinations and rulings in adjudicating Crabtree's petition, the court declines to issue a certificate of appealability for its resolution of any procedural

1 issues or any of Crabtree's habeas claims.

2 IT IS THEREFORE ORDERED that Crabtree's first amended petition for writ of
3 habeas corpus (ECF No. 33) is DENIED. The Clerk shall enter judgment accordingly and
4 close this case.

5 IT IS FURTHER ORDERED that a certificate of appealability is denied.

6 IT IS SO ORDERED.

7 DATED THIS 14th day of December 2023.

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11 LARRY R. HICKS
12 UNITED STATES DISTRICT JUDGE
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